REPORT OF THE ATTORNEY-GENERAL.

ATTORNEY-GENERAL'S OFFICE,
TALLAHASSEE, FLA., Dec. 31st, 1882.

Hon. William D. Bloxham, Governor of Florida:

SIR: It is directed by law that the Attorney-General shall make a written report to you "as to the effect and operation of the acts of the last" session of the Legislature, "the decision of the courts thereon, and referring to the previous legislation on the subject, with such suggestions as in his opinion the public interest may demand." In compliance therewith I have the honor to submit the following:

The operation of the statutes of 1881 has been generally satisfactory, but as to some of them special comment is necessary.

MUNICIPAL GOVERNMENT.

The Legislature at its last session passed an act entitled "An Act to repeal and dissolve Municipal Corporations under certain circumstances and to declare the manner in which such cities may become re-incorporated"—(chapter 3316, pp. 113-116, Pamphlet Laws 1881.)

The constitutionality of this act was brought in question before the Supreme Court at the June term A. D. 1881, in a proceeding by information in the nature of a *quo warranto* brought upon the relation of Haley, who had been elected mayor of the city of Fernandina in April of that year under the general act of 1869, providing for the incorporation of cities and towns, against Stark, who was appointed Mayor by your Excellency under the above act of 1881. The Court held the act of 1881 to be in conflict with section 21 of article 4 of the Constitution, which requires that the Legislature shall establish a *uniform* system of municipal government, and to be void in all its provisions, both so far as it proposed to dissolve existing corporations, or provide a new system of government. The Court remarks: that any action of the Legislative Department "which destroys the *uniformity* of a pre-existing system and permits and authorizes in cities similarly situated systems of government differing essentially in the manner of the selection of officers, their terms of office and the manner of

the assessment and collection of revenue, cannot be sustained. * * * The Legislature, instead of establishing a uniform system of municipal government, leaves it [by this act] to the *discretion* of twenty residents and one-half of the bonded creditors of corporations to fix the character of government. The Legislature must so act as to *itself establish*, first, a system of municipal government; and, second, the system must be a *uniform* system." The opinion is to be found on pages 255-267 of the 18th volume of Supreme Court Reports. There can be no risk in saying that the act passed at the same session entitled "An Act to dissolve Municipal Corporations under circumstances therein stated and to provide governments for the same," (chapter 3315, pp. 110-113, Pamphlet Laws of 1881) is for the same reason void. It has been practically treated to be so.

BOARDS OF HEALTH.

The constitutionality of the act entitled an "An act to provide for the appointment of Boards of Health of Incorporated Cities and Towns in this State containing three hundred or more registered voters," approved March 7, 1881, was also passed upon by the Supreme Court at the January term of the present year. This act provides that the Governor shall appoint for every "incorporated city and town containing three hundred or more registered voters, a Board of Health consisting of five persons, and that the Mayor of the city or town or chairman of the Board of County Commissioners shall be *ex-officio* members of such Boards." In 1879 an act was passed entitled "An Act to provide a uniform system of Quarantine in this State," which provided that the Mayor and Aldermen and City Physician, if there be one, of *every* incorporated city and town should be the Board of Health thereof. Your Excellency having made appointments for a Board of Health under the act of 1881, at Fernandina, such board found itself interfered with by the Mayor and Aldermen of that city, who claimed to still have and were exercising the powers and privileges given by the act of 1879, they contending the act of 1881 to be unconstitutional and void. A proceeding by information in the nature of a *quowarranto* was brought to test the validity of this assumption, which they based upon the theory that the act of 1881 was void because it was in violation of the section of the Constitution above referred to and of section 14 of the same article, which provides that *no law shall be amended or revised* by reference to its title only, but in such case the act as revised or section as amended shall be re-enacted or published at length. The court held that the act was not in conflict with either provision, and the Mayor and Aldermen ceased to usurp such

functions. The decision is to be found on pp. 501 *et. seq.* of 18th volume of Fla. Reports. I have heard no complaint of the operations of this statute.

PUBLIC ROADS.

Section one of the act of 1881, entitled "An Act to keep in good repair the public roads and highways in this State," provides that persons who fail or refuse to work a road shall be arrested and brought before a Justice of the Peace to show cause, if any they have, why they so failed or refused, "and if said cause so shown be not sufficient in the *judgment of such Justice* they shall be deemed guilty of *a misdemeanor* and fined not less than one nor more than twenty dollars, or be imprisoned in the County Jail not less than twenty nor more than thirty days at hard labor." No provision is made in this act for the trial of a person *by jury* for such *misdemeanor*. The third article of the Bill of Rights provides that "the right of trial by a jury shall be secured to all and remain inviolate forever; but in all *civil* cases a jury trial may be waived by the parties in the manner to be prescribed by law." The *failure* or *default* being made a *misdemeanor* it can hardly be doubted that the persons so arrested are entitled to a *trial by jury*, and it would probably be well for the Legislature to make such *misdemeanor*, as well as those offences prescribed by sections 2, 3, 4, of the same act; triable in the same manner as other offences of which Justices of the Peace have trial jurisdiction are, under the Justice trial act of 1877. This defect in the statute has elicited considerable notice.

HARBOR MASTERS.

Whether, in view of the principles set forth in the opinion of the Supreme Court in the case of Webb vs. Dunn (18th Fla. Reports, 721), which declares the act of 1879 (Chapter 3159), amending the Pensacola Harbor Master Law of 1866 (Chapter 1620) to be a "regulation of commerce" and in conflict with section 8 of Article 1 of the U. S. Constitution, it will be advisable to amend in any way the act of 1881, entitled "An Act to have Harbor Masters of this State appointed by the Governor," (Chapter 3306,) or to otherwise legislate upon the subject matter, will be a question for the Legislature to consider.

APPEALS FROM JUSTICES' COURTS.

At the June term of the Supreme Court it was held in the case of the State ex rel. vs. Judge Baker, of the Fourth Circuit, that the statute of 1875 (Chapter 2040) as amended by the act of 1881 (Chapter 3268), authorizing a trial *de novo* by the Circuit Court of a case appealed to it from a Justice of the Peace

was, in so far as it allows such trial *de novo*, in conflict with the Constitution of the State. The Court holds that the jurisdiction of the Circuit Court in such cases is *appellate* only; that a trial *de novo* is the exercise of *original* jurisdiction; and that in cases at law where the amount in controversy does not exceed one hundred dollars, the Circuit Court can have no such jurisdiction; and that an appeal from a judgment of a Justice of Peace to the Circuit Court has only the effect of a Writ of Error. In the opinion it is remarked as follows: "It is said the Legislature has not provided any machinery by which the proceedings, *testimony* and exceptions, &c. may be brought up by the appeal for review. This may be true, and if it is beyond the power of the Courts to establish rules to accomplish the object, resort must be had to the Legislature to supply them. As the law stands it is undoubtedly the duty of the Circuit Courts on such an appeal duly effected to examine the *proceedings* as certified by the Justice and to reverse or affirm the judgment as material errors may or may not appear, and so certify the same to the Court below as on a Writ of Error or Certiorari *at common law.*"

I feel it to be proper to say that the Legislature should be recommended to provide for the machinery for taking up the testimony and exceptions in such cases.

ACTION FOR INJURIES RESULTING IN DEATH.

Legislation should be had giving to a widow, or, when there is no widow, to minor children, a right of action for injury to a husband resulting in his death, where such injury is intentional or occasioned by the negligence of another, and is not justifiable. Provision should be made that any such action commenced by a widow shall, on her death, survive to such minor child or children as may survive her.

ADMISSION OF DEEDS IN EVIDENCE.

From a late decision of our Supreme Court, it is apparent that the effect of the acknowledgments by the grantor or proof by a subscribing witness of the execution of a deed for record does not have the effect to entitle the deed, or a certified copy from the record, to admission in evidence, unless the execution is regularly proved according to the rules of the Common Law. I believe it will meet the approval of the profession and public, if such originals, with the certificate of acknowledgment or proof, and certified copies of the records thereof, are made admissible in evidence without further proof, and to be *prima facie* evidence of execution of the deed. Prior to the decision

referred to, such was the understanding and practice in some parts of the State, and such is the statutory provision of several States.

REVENUE LAW.

Should the license tax on commercial agents, usually known as "drummers," be continued, the provisions of the penal provisions of the revenue law should be made more explicit as to their failing to exhibit their license on demand of any Collector of the Revenue. Unless they are required by law to make such exhibition, Collectors can hardly perform their duties efficiently.

The revenue law should also be amended so as to *expressly* provide that real estate shall be liable for sale for payment of occupational taxes.

Experience has proven that the Comptroller should have power to correct assessments in all cases where sales have been made and the State is the purchaser, in which manifest injustice has been done by excessive assessments, or the assessment of property not taxable, or the assessment to one person of property not belonging to him with property which does belong to him. The interest of the State can be very greatly subserved and much injustice remedied in this way.

There are other matters which may require some legislative action, but it is hardly necessary to embody them in this report. They can be more advisably submitted to members or committees of the Legislature for preliminary consideration.

I have the honor to be, very respectfully,

GEO. P. RANEY,
Attorney General.

BIENNIAL REPORT

OF THE

SUPERINTENDENT PUBLIC INSTRUCTION

FOR THE

SCHOOL YEARS 1881 AND 1882.

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BIENNIAL REPORT

OF THE

SUPERINTENDENT OF PUBLIC INSTRUCTION.

OFFICE SUPERINTENDENT OF PUBLIC INSTRUCTION,
TALLAHASSEE, FLA., December 30, 1881.

TO HIS EXCELLENCY, WM. D. BLOXHAM,
Governor of Florida:

SIR—In accordance with the requirements of the Constitution, I render to you my report as Superintendent of Public Instruction for the years 1881 and 1882.

I have the honor to be, very respectfully, your obedient servant,

E. K. FOSTER,
Superintendent of Public Instruction.

REPORT.

It is hardly necessary for me to make any reference in my report to the importance of education, but it is well to sometimes refer to what is admitted to be a duty, in order that we may understand whether that duty is properly performed, and whether errors are being committed, or liable to be committed, that may have future evil results. Through the force of unyielding circumstances, a large class of people in our State were made citizens at a time when they were utterly unable to proberly exercise the duties of citizens, and when, through no fault of their own, they could not properly understand such duties. The vicissitudes of war had also impoverished many good citizens and rendered fatherless many homes; and there were thousands of parents who desired to educate their children but had not the means to do so. Under these circumstances, the State undertook to supply schools to all that needed them, and for years has been endeavoring to faithfully carry out that purpose.

It is my pleasure to report that the cause of education has shown very rapid advancement in this State during the last two years. This is apparent when reference is made to the number of schools reported to this office as organized for the present scholastic year, and to the very large increase in the attendance of children. In 1879 the number of schools reported was 1,131. In 1882 the number reported as organized